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Cases, Regulations, and Statutes

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The latest guidance, in *Rev. Proc. 2008-52,*[12] adds another twist – the automatic accounting change number. That number, under Section 2.01(4) of the Appendix to *Rev. Proc. 2008-52,*[13] is "1." The designated automatic accounting change number is to be typed or printed on the application discussed below.[14]

Reporting to IRS

The latest guidance, *Rev. Proc. 2008-52,*[15] continues the requirement that, to take advantage of the automatic consent to treat CCC loans as loans after treating CCC loans as income, a taxpayer must file Form 3115, *Application for Change in Accounting Method*. Since the change has automatic consent, Form 3115 is filed with the return for the year of the change (there is no user fee).[16] The original and accompanying statements explaining the completed lines of Form 3115 are to be filed with a timely filed (including extensions) income tax return for the year of change with a copy to –

Internal Revenue Service
ATTN: CC:ITA – Automatic Rulings Branch
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

No limits on shifting back to treating CCC loans as income

After utilizing the procedure to shift from treating CCC loans as income back to treating CCC loans as loans, there is no restriction on a taxpayer who uses the automatic consent procedure to later elect to treat CCC loans as income.[17] A taxpayer who has been treating CCC loans as loans may shift back at any time to treating CCC loans as income.[18] However, a Section 77 election, once made, applies to all loans that year.[19] Moreover, the election to treat CCC loans as income applies to all commodities for that taxpayer.[20] Actually, the election involves reporting as income the value of the crop held as collateral for the loan up to the amount of the loan, rather than reporting the loan itself as income.[21] As the regulations state –

If a taxpayer elects or has elected. . . to include in his gross income of a loan from the Commodity Credit Corporation. . . then –

(1) No part of the amount realized by the Commodity Credit Corporation upon the sale or other disposition of the commodity pledged for such loan shall be recognized as income to the taxpayer, unless the taxpayer receives an amount in addition to that advanced . . . as the loan. . . "

In conclusion

The latest IRS guidance thus preserves the procedure, first announced in early 2002, to shift from treating CCC loans as income back to treating CCC loans as loans. The statutory authority to be able to elect at any time to treat CCC loans as loans to CCC loans as income has remained unchanged.

FOOTNOTES

[1] I.R.C. § 77.

[2] Rev. Proc. 2002-9, App. § 1.101(2), 2002-1 C.B. 327.

[3] *Id.*

[4] I.R.C. § 77(a).

[5] See generally 4 Harl, *Agricultural Law* § 27.03[5][c] (2008); Harl, *Agricultural Law Manual* § 4.02[1] (2008); 1 Harl, *Farm Income Tax Manual* § 2.09[4] (2008 ed.). See also Harl, "Changing CCC loan Reporting," 13 *Agric. L. Dig.* 33 (2002).

[6] Rev. Proc. 2002-9, 2002-1 C.B. 327.

[7] Rev. Proc. 2008-52, 2008-2 C.B. 587.

[8] Rev. Proc. 2002-9, 2002-1 C.B. 327.

[9] Rev. Proc. 2002-9, § 4.02, 2002-1 C.B. 327; Rev. Proc. 2008-52, § 4.02, 2008-2 C.B. 587.

[10] 2002-1 C.B. 327.

[11] 2008-2 C.B. 587.

[12] *Id.*

[13] *Id.*

[14] Rev. Proc. 2008-52, § 6.02(4), 2008-2 C.B. 587.

[15] § 6.02(7), 2008-2 C.B. 587.

[16] Rev. Proc. 2008-52, § 6.02(9), 2008-2 C.B. 587.

[17] See I.R.C. § 77.

[18] I.R.C. § 77(a).

[19] Ltr. Rul. 8819004, Jan. 22, 1988.

[20] Treas. Reg. § 1.77-1.

[21] See Treas. Reg. § 1.77-2(a).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

ADMINISTRATIVE EXPENSES. The debtor filed for Chapter 12. The debtor had purchased farm equipment on credit from an equipment supplier. The supplier purchased insurance policies on the equipment and included the premiums in the amount financed for each piece of equipment. The debtor's plan was confirmed and included payments on the supplier's claims on the basis of the fair market value of the equipment, with no provision for payment of the insurance premiums. One of the financed pieces of equipment, a combine, was destroyed in a fire and a claim was made on the insurance policy with the proceeds paid to the supplier. The debtor sought a re-amortization of the plan payments and the supplier sought recovery of the insurance premiums. The court held that the plan did not need to provide payment for the insurance premiums because the payments were made pre-petition and did not benefit the estate. ***In re*** **Hermesch Entities I, 2008 Bankr. LEXIS 2233 (Bankr. E.D. Okla. 2008)**.

FEDERAL TAX

SALE OF CHAPTER 12 PROPERTY. The debtor filed for Chapter 12 and the plan provided for the sale of real estate and breeding livestock used in the farming operation. The sale of the assets was estimated to produce $33,000 in capital gains subject to tax. The plan provided that any income resulting from the sale of the assets would be treated as an unsecured non-priority debt under Sections 507 and 1222(a)(2)(A). The Bankruptcy Court noted the split of the two courts which had ruled on this issue, *In re Knudsen, 356 B.R. 480 (Bankr. N.D. Iowa 2006), aff'd in part and rev'd in part, 389 B.R. 643 (N.D. Iowa 2008)* (tax from sale of Chapter 12 property treated as estate debt) and *In re Hall, 376 B.R. 741 (Bankr. D. Ariz. 2007), rev'd, CV-07-679-TUC-DCB (D. Ariz. Aug. 6, 2008)* (tax from sale of Chapter 12 property treated as estate debt). (Note, appeal of *In re Hall* not reported as of the date of the current *Schilke* decision; *Hall* case reversed on appeal). The Bankruptcy Court agreed with *In re Knudsen* and held that, although no separate estate is created in Chapter 12, the estate had sufficient existence to support treatment of capital gains from the sale of estate property as a claim against the estate and not solely against the debtor outside of bankruptcy. On appeal, the District Court affirmed. ***In re* Schilke, 2008 U.S. Dist. LEXIS 68176 (D. Neb. 2008), *aff'g*, 379 B.R. 899 (Bankr. D. Neb. 2007)**.

FEDERAL AGRICULTURAL PROGRAMS

2008 FARM BILL. Legislation has been introduced in Congress to clarify the so-called "10 acre" provision of the farm bill. Subcommittee on General Farm Commodities and Risk Management Chairman Bob Etheridge (D-NC) and Ranking Member Congressman Jerry Moran (R-KS) have introduced H.R. 6849 which says farmers can aggregate acres to meet the 10-acre minimum to qualify for farm programs. The 2008 farm bill requires farms to have at least 10 base acres to receive direct, counter cyclical or the new ACRE program payments. USDA's interpretation of the law would not allow aggregation of acreage while members of Congress argued that was their intention. USDA countered that Congress said one thing but did another in an effort to keep the bill within budget. H.R. 6849 would overrule USDA's interpretation.

GENETICALLY-ENGINEERED ANIMALS. The APHIS is seeking public comment and scientific and technical empirical data and information concerning ongoing and future research on genetically engineered animals. APHIS' interest is to ensure that genetically engineered animals imported into the United States or moved interstate do not present risks to U.S. livestock health. APHIS is also seeking comment on what types of actions and approaches APHIS should consider in addressing any such risks that would complement the Food and Drug Administration's oversight, described in draft guidance below. **73 Fed. Reg. 54360 (Sept. 19, 2008)**.

The FDA has announced the availability of a draft guidance document, GFI187, entitled "Regulation of Genetically Engineered Animals Containing Heritable rDNA Constructs." This draft guidance is intended to clarify FDA's requirements and recommendations for producers and developers of genetically engineered (GE) animals and their products. The draft guidance describes how the new animal drug provisions of the Federal Food, Drug, and Cosmetic Act apply with respect to GE animals, including FDA's intent to exercise enforcement discretion regarding requirements for certain GE animals. **73 Fed. Reg. 54407 (Sept. 19, 2008)**

IRRADIATION. The FSIS has announced that it has received a petition from the American Meat Institute to recognize the use of low penetration and low dose electron beam irradiation on the surface of chilled beef carcasses as a processing aid. Based on its consideration of the data and information contained in the petition, FSIS will hold a public meeting on September 18, 2008, to review the information contained in the petition and to receive public comments on what action it should take with respect to the petition. A copy of the petition is available on the FSIS Web site, http://www.fsis.usda.gov/News?Meetings_&_Events/ **73 Fed. Reg. 52001 (Sept. 8, 2008)**.

MEAT AND POULTRY PRODUCTS. The FSIS has adopted as final regulations amending the Federal Meat Inspection Act regulations to reference the most recent version of the National Institute of Standards and Technology Handbook 133 that contains standards for determining the reasonable variations allowed for the declared net weight on labels of immediate containers of meat and poultry products; the procedures to be used to determine the net weight and net weight compliance of meat and poultry products; and related definitions. The regulations also consolidate the separate net weight regulations for meat and poultry products in a new CFR part, applicable to both meat and poultry products. **73 Fed. Reg. 52189 (Sept. 9, 2008)**.

NATIONAL ANIMAL IDENTIFICATION SYSTEM. The APHIS has issued interim regulations amending the regulations concerning the interstate movement of animals to limit the use of the animal identification number (AIN) with the 840 prefix to animals born in the United States. In addition, the interim regulations extend the restrictions on the removal of official identification devices to include devices applied to imported animals in their countries of origin. The interim regulations also require that if such a device is lost following importation into the United States, the animal may only be retagged with an official identification device using a numbering system other than an AIN beginning with an 840 prefix. **73 Fed. Reg. 54059 (Sept. 18, 2008)**.

NATIONAL ORGANIC PROGRAM. The AMS has adopted as final regulations amending the USDA National List of Allowed and Prohibited Substances to reflect one recommendation submitted to the Secretary of Agriculture by the National Organic Standards Board on May 22, 2008, revising the annotation of one substance on the National List, Methionine, to extend its use in organic poultry production until October 1, 2010. **73 Fed. Reg. 54057 (Sept. 18, 2008)**.

TUBERCULOSIS. The APHIS has issued interim regulations removing a zone in New Mexico from the list of accredited-free zones for bovine tuberculosis and reclassifying the entire state

as modified accredited advanced. **73 Fed. Reg. 52775 (Sept. 11, 2008)**.

The APHIS has issued interim regulations removing California from the list of accredited-free states for bovine tuberculosis and reclassifying the state as modified accredited advanced. **73 Fed. Reg. 54063 (Sept. 18, 2008)**.

FEDERAL ESTATE AND GIFT TAXATION

INCOME TAX RETURN. The taxpayer's spouse died in 2005 and the couple had not filed their 2000 through 2004 tax returns. The taxpayer filed for Chapter 13 bankruptcy in early 2006 and filed the 2000 through 2005 income tax returns using joint filing status. The Bankruptcy Court had ruled that I.R.C. § 6013(a) allowed the taxpayer to elect joint filing status only for the tax year of the spouse's death; therefore, the taxpayer could only file as married filing separately for 2000 through 2004. On appeal the court held that the reference to "taxable year" in Section 6013(a) referred to any open tax year and was not limited to the tax year of the spouse's death. **Vidalier v. U.S. Dept. of Treasury, 2008-2 U.S. Tax Cas. (CCH) ¶ 50,532 (W.D. La. 2008)**.

IRA. The decedent had owned an interest in an IRA which named one child as the remainder beneficiary. The decedent had also provided for a testamentary trust which was supposed to be funded in part by the IRA; however, the decedent failed to change the remainder beneficiary designation of the IRA to the trust. After the death of the decedent, the error was discovered and the child disclaimed one-half of the interest in the IRA and one-half of the interest of the trust in the IRA. The disclaimer resulted in the one-half interest in the IRA passing first to the trust and then to the other trust beneficiary's share. The IRS ruled that the disclaiming child could use the exception to the rule requiring distribution within five years after the death of the IRA owner who dies before distribution begins. The disclaiming child could receive distributions over life or a period not extending beyond the child's life expectancy under I.R.C. § 401(a)(9)(B)(iii). The IRS also ruled that the child would be taxed only on the IRA distributions not disclaimed and that the distributions disclaimed were taxable to the other child. **Ltr. Rul. 200827046, June 19, 2008**.

INTEREST ON PAYMENT OF ESTATE TAX. A decedent's estate owed income and estate taxes but lacked liquid assets to pay the taxes. The estate held real property assets which were sold to pay the taxes. In the meantime, under I.R.C. § 6161, taxpayer requested and was granted, due to economic hardship), an extension of time for paying the estate tax. During the period of extension for paying the estate tax, interest on the unpaid estate tax continued to accrue. The estate filed its Form 1041, U.S. Income Tax Return for Estates and Trusts, which reflected the income tax due. The estate claimed a deduction on the income tax return for the amount of interest due on the unpaid estate tax. The estate later paid the estate tax and interest due pursuant to the extension under I.R.C. § 6161. In a Chief Counsel's advice letter, the IRS ruled that, although a deduction is allowed, under I.R.C. § 163(h)(2)(E), for interest on payment of estate taxes deferred under I.R.C. § 6163, no deduction is allowed for extensions under I.R.C. § 6161 because I.R.C. § 163(h)(2)(E) does not specifically allow a deduction for Section 6161 extension interest. **CCA Ltr. Rul. 200836027, May 12, 2008**.

JOINT TENANCY. The decedent had opened and fully funded two joint brokerage accounts, one account with one other joint tenant with right of survivorship. Following the opening of the accounts, the decedent had accrued a tax liability for the a tax year. The decedent died before filing the decedent's tax year return. In a subsequent year, a return for the tax year was finally filed, and the IRS made an assessment of unpaid taxes. The IRS did not file a notice of federal tax lien. In a Chief Counsel's advice letter, the IRS ruled that, under state law, no interest in the brokerage accounts passed to the joint tenants until the death of the decedent. Thus, the joint tenant holders may be liable for the unpaid taxes owed by the estate, even though no tax lien had been filed. **CCA Ltr. Rul. 200836030, April 29, 2008**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer developed computer software for the electricity industry and tried to sell the software, unsuccessfully, for two years. The taxpayer claimed various business expense deductions for those years with a tax loss in each year. The IRS disallowed the deductions because the taxpayer's software activity was not a trade or business since the taxpayer did not engage in the activity with an intent to make a profit. Although the court acknowledged the nine factors of Treas. Reg. § 1.183-2(b), the court focused only on one factor. The court held that the activity was not a trade or business because the taxpayer failed to keep any records for the activity to support the expenses claimed. **Kourouma v. Comm'r, T.C. Summary Op. 2008-120**.

CORPORATIONS

FOREIGN CORPORATIONS. In a Chief Counsel advice letter, the IRS ruled that an entity which has filed a Form 8832, Entity Classification Election, to be a disregarded entity from its foreign owners cannot certify that it is the transferor of a U.S. real property interest for purposes of I.R.C. §§ 897 and 1445, which require 10 percent withholding on purchases of real property from a foreign person. **CCA Ltr. Rul. 200836029, Aug. 6, 2008**.

LOSS CORPORATIONS. The IRS has announced that the IRS and the Treasury Department will issue regulations under I.R.C. § 382(m) that address the application of Section 382 in the case of certain acquisitions made pursuant to the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289. Pursuant to Section 1117(a) and (b) of the Act, the Secretary of the Treasury is authorized to purchase any obligations and other securities issued by certain entities under the Act. A purchase that is made pursuant to this authority is hereinafter referred to as a "Housing Act Acquisition." The IRS and Treasury will issue

regulations under I.R.C. § 382(m) providing that notwithstanding any other provision of the code or the regulations thereunder, for purposes of Section 382 and the regulations thereunder, with respect to a corporation as to which there is a Housing Act Acquisition, the term "testing date" (as defined in Treas. Reg. § 1.382-2(a)(4)) shall not include any date on or after the date on which the United States (or any agency or instrumentality thereof) acquires, in a Housing Act Acquisition, stock (including stock described in I.R.C. § 1504(a)(4)) or an option to acquire stock in the corporation. **Notice 2008-76, I.R.B. 2008-39**.

CHARITABLE ORGANIZATIONS. The IRS has issued proposed regulations and adopted as final regulations necessary to implement the redesigned Form 990, Return of Organization Exempt From Income Tax. The final regulations make only nonsubstantive revisions to comply with Federal Register requirements. The proposed regulations make revisions to the regulations under I.R.C. §§ 6033 and 6043 to allow for new threshold amounts for reporting compensation, to require that compensation be reported on a calendar year basis, and to modify the scope of organizations subject to information reporting requirements upon a substantial contraction. The proposed regulations also eliminate the advance ruling process for new organizations, change the public support computation period for organizations described in I.R.C. §§ 170(b)(1)(A)(vi) and 509(a)(1) and in I.R.C. § 509(a)(2) to five years, consistent with the revised Form 990, and clarify that support must be reported using the organization's overall method of accounting. All tax-exempt organizations required under I.R.C. § 6033 to file annual information returns are affected by the proposed regulations. **73 Fed. Reg. 52527 (Sept. 9, 2008)**.

CONSTRUCTIVE RECEIPT OF INCOME. The taxpayer filed suit against an employer for employment discrimination and entered into a settlement agreement under which the employer made an initial lump sum payment followed by periodic payments. The agreement provided that the taxpayer could not change the timing or the amount of the periodic payments in order to accelerate, defer, increase or decrease such payments. The taxpayer also agreed that the taxpayer could not sell, mortgage, encumber or anticipate all or any portion of the periodic payments by assignment or other means. The IRS ruled that the taxpayer was not in actual or constructive receipt of the periodic payments or their cash equivalent until each payment was made. The employer had the right to assign the obligation to make the periodic payments to a third party which remained liable for the payments even in the event of the bankruptcy or termination of the employer. The IRS also ruled that the "economic benefit doctrine" did not apply because the assignment of the periodic payments to a third party did not create a separate fund that was irrevocably and unconditionally set aside for the taxpayer. **Ltr. Rul. 200836019, June 2, 2008**.

DEPENDENTS. The taxpayer was employed as a mechanic and lived with a parent, two grandparents, a sister and a nine year old cousin. The taxpayer was the only member of the household who was employed. The taxpayer contributed to the household expenses and paid for most of the cousin's personal expenses. The taxpayer filed as head of household and claimed the parent and the cousin as dependents. The cousin's parents lived in the Dominican Republic. The court held that the cousin was a qualified child under I.R.C. § 152(d)(2) because the taxpayer maintained the household, the cousin was a child of the taxpayer's sibling, and the cousin lived with the taxpayer the entire tax year. The court held that the taxpayer was entitled to the dependency deduction for the cousin because the taxpayer paid for more than one-half of the cousin's support for the tax year. **Olivio v. Comm'r, T.C. Summary Op. 2008-115**.

DISASTER LOSSES. On September 13, 2008, the president determined that certain areas in Texas are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of Hurricane Ike, which began on September 7, 2008. **FEMA-1791-DR.** On September 13, 2008, the president determined that certain areas in Louisiana are eligible for assistance from the government under the Act as a result of Hurricane Ike, which began on September 11, 2008. **FEMA-1792-DR**. On September 11, 2008, the president determined that certain areas in Louisiana are eligible for assistance from the government under the Act as a result of Hurricane Ike, which began on September 11, 2008. **FEMA-3295-EM**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2007 returns.

DIVIDENDS. The IRS has issued a reminder to taxpayers in Alaska that the payments received from the Alaska Permanent Fund Dividend, including the one-time additional $1,200 Resource Rebate paid in 2008, are taxable income to adults and children. The IRS issued guidance in the form of questions and answers as to the procedure and forms to be filed to report the income for minor and adult dependent children, as well as the determination as to whether estimated taxes will need to be paid. **SEA-09-20, Sept. 10, 2008**.

HOME BUYER TAX CREDIT. The IRS has issued initial guidance for claiming the I.R.C. § 36 first time home buyer tax credit, added by the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289. The credit is only available for a U.S. home purchased after April 8, 2008, and before July 1, 2009. Vacation homes and rental property are not eligible for the credit. The credit will be claimed on IRS Form 5405. This form, along with further instructions, will be available later in 2008 on the IRS web site at www.irs.gov. **IR-2008-106**.

INNOCENT SPOUSE. The taxpayer had filed a joint return with the taxpayer's former spouse. The spouse prepared the return and did not allow the taxpayer to review the return until after it was filed. The former spouse had overstated the amount of tax withheld from wages and the return had claimed a refund. The IRS later assessed a deficiency and a penalty. The deficiency was paid by the former spouse but not the penalty. The court granted the taxpayer relief from the liability for the penalty as an innocent spouse because (1) the taxpayer was separated from the former spouse at the time innocent spouse relief was sought, (2) the divorce agreement provided that the former spouse would pay any tax liability from the joint return, and (3) the taxpayer had not received any benefit from the tax return error. **Schwind v. Comm'r, T.C. Summary Op. 2008-119**.

IRS. The Office of Chief Counsel has issued an interim guidance instructing Chief Counsel attorneys not to attempt to use the eAccess feature on the Tax Court's website pending the issuance of comprehensive guidance. eAccess is a new Tax Court service that allows practitioners and pro se parties a secured means to remotely accesses the court's website to view documents filed after March 1, 2008. The Chief Counsel attorneys may continue to visit the Tax Court's web site for docket information and online viewing of court orders as long as the viewing is not attempted through the eAccess portal. **Chief Counsel Notice CC-2008-018.**

LIKE-KIND EXCHANGES. The taxpayer structured two separate exchanges, one a reverse exchange in which replacement property was acquired and "parked" with an exchange accommodation titleholder before the taxpayer transferred its relinquished property, followed by a standard deferred exchange in which the relinquished property was transferred prior to the acquisition of the replacement property. For the reverse exchange, the replacement property was acquired and parked with the exchange accommodation titleholder within the guidelines of *Rev. Proc. 2000-37*, and the taxpayer identified the relinquished property in a timely manner. The relinquished property, however, had a value far in excess of the replacement property. Thus, the taxpayer engaged in a second "forward" like-kind exchange to defer the gain that remained after the exchange of the relinquished property for the replacement property. The same replacement property would then be used in both exchanges. For both exchanges, the taxpayer used a qualified intermediary to execute the transfers of the properties involved in the exchanges. Further, all guidelines were followed to assure that the taxpayer was not in constructive receipt of any of the exchange funds during the two exchange periods. However, while the taxpayer in good faith intended to engage in a second exchange involving the relinquished property, the second exchange was not completed. In a Chief Counsel advice letter, the IRS ruled that gain on the first exchange was deferrable under I.R.C. § 1031 but not deferrable on the second exchange. **CCA Ltr. Rul. 200836024, May 12, 2008**.

PARTNERSHIPS

ELECTION TO ADJUST BASIS. A partner sold the partner's interest in a partnership to another partner in that partnership. The partnership failed to make the I.R.C. § 754 election to adjust the partnership basis in partnership property on the tax return for the year of the sale. The IRS granted an extension of time to file the election. **Ltr. Rul. 200837001, May 30, 2008**.

PENALTIES. The taxpayer was a certified public accountant who operated as a sole proprietorship. The taxpayer reported no income from the proprietorship because the taxpayer treated all income from the business as royalty payments, deducting the payments from business income and claiming the royalty payments as such on the taxpayer's personal income tax return. The business also paid for many of the taxpayer's personal expenses but these amounts were not claimed as income by the taxpayer. The taxpayer also failed to report all of the royalty payments as taxable income. The royalty income was not included in self-employment income. The taxpayer did not have accurate records to support the income or deductions claimed. The IRS assessed a negligence penalty and a fraud penalty. The court held that the penalties were properly assessed. **Baisden v. Comm'r, T.C. Memo. 2008-215**.

PENSION PLANS. For plans beginning in September 2008 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 4.50 percent, the corporate bond weighted average is 6.10 percent, and the 90 percent to 100 percent permissible range is 5.49 percent to 6.10 percent. **Notice 2008-75, I.R.B. 2008-38**.

RETURNS. The IRS announced that taxpayers and preparers affected by Hurricane Ike have been granted an extension to January 5, 2009, to file corporate returns and third-quarter estimated taxes otherwise due on September 15, 2008 without incurring penalties. A further postponement of the filing deadline by the IRS is likely, following damage assessments by the Federal Emergency Management Agency. Affected taxpayers should mark paper returns with the words "Hurricane Ike" and in the case of electronically filed returns, taxpayers can use their software's "disaster" feature, if available. **IR-2008-105**.

The IRS announced that taxpayers and preparers affected by Hurricane Gustav have been granted an extension to January 5, 2009, to file corporate returns and third-quarter estimated taxes otherwise due on September 15, 2008 without incurring penalties. The IRS will also waive penalties for failure to deposit employment taxes dues between September 1 and September 15, 2008, if the deposits are made by September 16, 2008. Affected taxpayers should mark paper returns with the words "Hurricane Gustav" and in the case of electronically filed returns, taxpayers can use their software's "disaster" feature, if available. **IR-2008-100**.

The IRS has issued proposed regulations regarding the imposition of penalties under I.R.C. § 6707A for the failure to include on any return or statement any information required to be disclosed under I.R.C. § 6011 with respect to a reportable transaction. **73 Fed. Reg. 52784 (Sept. 11, 2008)**.

The IRS has provided tax relief for victims of Hurricane Ike who reside or have a business in several Texas counties that constitute a presidentially declared disaster area. These taxpayers have until January 5, 2009, to file returns, pay taxes and perform other time-sensitive acts otherwise due on or after September 7, 2008, and before January 5, 2009, including individual estimated tax returns and corporate tax returns due September 15 and extended individual returns due October 15. The postponement extends to taxpayers who are not in the disaster area, but whose books and records, or tax professionals' offices are in the covered disaster area, as well as to relief workers affiliated with a recognized government or charitable organization assisting in the relief activities in the covered disaster area. The IRS will also waive the failure to deposit penalties for employment and excise deposits due on or after September 7 and before September 22, 2008, as long as the deposits are made on or before September 22. The IRS computer systems will automatically identify taxpayers

located in the covered disaster area and apply automatic filing and payment relief. For taxpayers residing or having a business outside the disaster area, the tax relief must be requested by calling the IRS disaster hotline at 1-866-562-5227. **IR-2008-107.**

The IRS has extended return filing and payment deadlines for victims of Hurricane Ike in several Louisiana parishes. Taxpayers residing or having businesses in these presidentially declared disaster areas have until January 5, 2009, to file returns, pay taxes and perform other time-sensitive acts otherwise due on or after September 11, 2008, and before January 5, 2009. The extension includes individual estimated tax returns and corporate tax returns that were due on September 15 and extended individual returns due on October 15. The postponement of time to file and pay does not apply, however to information returns in the Form W-2, 1098, 1099 series or to Forms 1042-S or 8027. The IRS will waive the failure to deposit penalties for employment and excise deposits due on or after September 11, 2008, and before September 26, 2008, as long as the deposits are made on or before September 26, 2008. This includes failure to deposit penalties on employment and excise deposits that were waived under previous relief granted due to Hurricane Gustav. Taxpayers whose books, records or tax professionals' offices are in the covered disaster area are also entitled to relief. In addition, all relief workers affiliated with a recognized government or charitable organization assisting the relief activities in the covered disaster area are eligible for relief. Affected taxpayers claiming a disaster loss due to Ike on their returns for the 2007 tax years should write, "Louisiana/Hurricane Ike" at the top of their returns to receive expedited service. **IR-2008-108**.

SAFE HARBOR INTEREST RATES

October 2008

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.19	2.18	2.17	2.17
110 percent AFR	2.41	2.40	2.39	2.39
120 percent AFR	2.64	2.62	2.61	2.61
		Mid-term		
AFR	3.16	3.14	3.13	3.12
110 percent AFR	3.48	3.45	3.44	3.43
120 percent AFR	3.81	3.77	3.75	3.74
		Long-term		
AFR	4.32	4.27	4.25	4.23
110 percent AFR	4.76	4.70	4.67	4.65
120 percent AFR	5.19	5.12	5.09	5.07

Rev. Rul. 2008-49, I.R.B. 2008-40.

TAX SHELTERS. The IRS has announced that it has reached a settlement with Arnold & Porter, LLP, which paid a civil tax shelter promoter penalty with respect to its failure to comply with tax shelter registration requirements and its participation in certain listed transactions. The firm, which cooperated with the IRS's examination, has put into place a compliance system designed to assure compliance with tax shelter disclosure and list maintenance requirements. **IR-2008-104**.

TRUSTS. The IRS has issued guidance that informs trustees and middlemen of widely held fixed investment trusts (WHFITs) that the IRS will not impose penalties under the reporting rules pursuant to Treas. Reg. § 1.671-5(m) with respect to calendar year 2008. The guidance also informs trustees and middlemen of widely held mortgage trusts (WHMTs) that, pending future published guidance, certain modifications of mortgages held by a WHMT that has entered into a guarantee arrangement are not required to be reported under the WHFIT reporting rules. This guidance is effective September 12, 2008. Trustees and middlemen may apply the reporting exception for certain modifications of mortgages as of January 1, 2007. **Notice 2008-77, I.R.B. 2008-40**.

PROPERTY

EASEMENTS. The plaintiff and defendant owned neighboring acreages which once belonged to a single owner. The plaintiff's property had no legal access to a public road, although the plaintiff had permissive use of access across other neighboring property. When the original large tract of land was divided, the plaintiff's property was accessed by a farm path across several of the properties divided from the original tract. The court held that the plaintiff's land had an easement by necessity because the original division of the land created a parcel without legal access to a public road. **Jernigan v. McLamb, 2008 N.C. App. LEXIS 1607 (N.C. Ct. App. 2008)**.

IN THE NEWS

CLEAN AIR ACT. Brownsfieldnetwork reports that a three-judge panel for the U.S. Court of Appeals for the District of Columbia heard testimony on September 15, 2008, as to whether the EPA should regulate agricultural dust under the Clean Air Act. The American Farm Bureau, National Cattlemen's Beef Association and National Pork Producers Council filed the appeal saying the regulations would be devastating to American farmers. Tamara Thies, Chief Environmental Counsel for NCBA says the rules, "Would require an unattainable level of dust control, which could force producers to sell cattle to comply." Julie Anna Potts, General Counsel with the American Farm Bureau told the court the Clean Air Act does not require the EPA to regulate agricultural dust because, "EPA's own studies did not show that agricultural dust caused the adverse health effects that trigger Clean Air Act regulation." Iowa Senator Charles Grassley told reporters he hopes the court will, "Bring some common sense to these rulings." But, if the court rules in favor of the regulations, "You tell me how you're going to regulate the wind." EPA issued a final rule on regulating dust particles under the Clean Air Act in October of 2006, 71 Fed. Reg. 61143 (Oct. 17, 2006). **See http://www.brownfieldnetwork.com/gestalt/go.cfm?objectid=6D0A3334-AF0C-F801-AA9740E80D2AFC13**

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More information can be found on the AALA web site http://www.aglaw-assn.org or by contacting Robert Achenbach, AALA Executive Director at RobertA@aglaw-assn.org or by phone at 541-466-5444.